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and Certain of Its Affiliates*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11 Case No.
	:
LEHMAN BROTHERS HOLDINGS INC., et al.,	: 08-13555 (SCC)
	:
Debtors.	: (Jointly Administered)
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STIPULATION AND AGREED ORDER REGARDING SETTLEMENT

This Stipulation and Agreed Order (the “Stipulation and Agreed Order”) is entered among BNC Mortgage Inc. (“BNC”), acting through its Plan Administrator, Lehman Brothers Holdings Inc. (“LBHI” and solely in its capacity as such, the “Plan Administrator”), Sylvia Vega-Sutfin, Michelle Seymour, Linda (Weekes) Howard-James, Isabel Guajardo, Coleen Denise Colombo, and Alan S. Fukushima, in his capacity as trustee for the Bankruptcy Estate of Cheryl McNeil (collectively, the “Claimants”) with respect to the following:

RECITALS

A. On November 18, 2005, the Claimants commenced an action in the Superior Court of the State of California, County of Sacramento, against BNC and three former BNC employees (the “California Action”), asserting claims, inter alia, for employment discrimination, harassment, failure to prevent discrimination, retaliation, intentional infliction of emotional distress, and defamation.

B. Commencing on September 15, 2008, and periodically thereafter, LBHI and certain of its affiliates, including BNC, each filed a voluntary petition commencing the Chapter 11 Cases.¹

C. On January 9, 2009, the California Action was stayed by the commencement of BNC's Chapter 11 Case.

D. On December 6, 2011 the Bankruptcy Court entered an order confirming the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* [ECF No. 22737] (the “Plan”), which became effective on March 6, 2012.

E. Pursuant to the Plan, LBHI was appointed as Plan Administrator and is authorized on behalf of BNC to prosecute, elect not to pursue, compromise, settle, abandon, dismiss or otherwise dispose of all causes of action, controversies, liabilities, obligations, rights, suits, damages, judgments, claims, and demands whatsoever belonging to or assertable by BNC free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

F. On July 7, 2009, each Claimant filed a proof of claim (claim numbers 5222, 5223, 5224, 5225, 5226, and 5227 (collectively, the “Original Claims”)) against BNC asserting both compensatory and punitive damages in the aggregate amount of \$35 million. On June 7, 2017, each Claimant filed an amended proof of claim (claim numbers 68258, 68259, 68260, 68261, 68262, and 68263, collectively, the “Amended Claims”)) against BNC asserting damages in the aggregate amount of \$27 million.

G. The Plan Administrator, BNC, and the Claimants have engaged in arm’s-length, good faith negotiations and have agreed to resolve all disputes and issues between them so as to

¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement annexed hereto as Exhibit A.

avoid extensive, uncertain, and expensive litigation and to settle the California Action, the Original Claims and the Amended Claims on the terms set forth in the Settlement Agreement (as defined below) and herein.

H. Pursuant to the Broad Form Employment Practices Liability Insurance Policy number BM00020483EP05A (the “Policy”), issued by the Insurer, to LBHI, the Insurer is required to indemnify LBHI for certain Loss Amounts (as defined in the Policy) incurred by LBHI and certain Additional Insured Organizations (as defined in the Policy), including BNC, on account of any Claim first reported to the Insurer during the policy period of April 14, 2005 to April 14, 2006, which alleged Employment Practice Liability (as defined in the Policy), up to a Limit of Liability of \$100,000,000 and subject to a self-insured per-Claim Retention of \$5,000,000 (the “Retention Amount”).

I. The Insurer has agreed to indemnify BNC for Loss Amounts (as defined in the Policy) incurred by BNC in connection with the California Action, the Original Claims and the Amended Claims, including BNC’s Defense Costs (as defined in the Policy and agreed by the Insurer), and the contribution toward settlement of the California Action, the Original Claims and the Amended Claims, to the extent such amounts are in excess of the Retention Amount under reservation of rights, and subject to the Bankruptcy Court’s approval, on the terms set forth in the Funding Agreement (as defined below) and herein.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Plan Administrator, BNC, and each of the Claimants (each of the foregoing a “Party” and collectively the “Parties”), through their undersigned counsel, and **ORDERED AND APPROVED** by the Court as follows:

1. This Stipulation and Agreed Order and the Funding Agreement shall have no force

or effect unless and until approved by the Bankruptcy Court (the “Effective Date”).

2. The settlement agreement entered into between the Parties, dated September 11, 2019 (the “Settlement Agreement”), a copy of which is annexed hereto as Exhibit A, is hereby approved.

3. To the extent necessary, the injunction and stay under the Plan are lifted to permit the Insurer to fund \$1,500,000 of the \$5,000,000 payment under the Settlement Agreement, and also reimburse BNC for Defense Costs (as defined by the Policy and agreed by the Insurer) incurred or to be incurred by BNC, pursuant to the funding agreement between the Insurer and BNC, dated September 11, 2019 (the “Funding Agreement”), a copy of which is annexed hereto as Exhibit B.

4. Each person who executes this Stipulation and Agreed Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation and Agreed Order on behalf of such Party.

5. This Stipulation and Agreed Order shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

6. No amendment or waiver of any provision of this Stipulation and Agreed Order shall be effective unless the same shall be in writing and signed by the Parties, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. This Stipulation and Agreed Order shall be governed by and construed in accordance with the Bankruptcy Code and the laws of the State of New York, without reference

to conflicts of law principles.

8. This Stipulation and Agreed Order may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9. Notwithstanding the applicability of Federal Rule of Bankruptcy Procedure 4001(a)(3), the terms and provisions of this Stipulation and Agreed Order shall be effective and enforceable immediately upon the Effective Date, and shall thereafter be binding upon the Parties hereto and their respective affiliates, successors, and assigns.

10. This Court shall retain exclusive jurisdiction over any and all disputes relating to the interpretation, implementation and enforcement of the terms of this Stipulation and Agreed Order.

[Signatures Appear on Next Page]

In Witness Hereof, this Stipulation and Agreed Order has been executed and delivered as of the date written below.

Dated: September 11, 2019
New York, New York

By:

/s/ Jacqueline Marcus
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Jacqueline Marcus

*Attorneys for Lehman Brothers Holdings Inc.
and BNC Mortgage Inc.*

-and-

By:

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Isabel Guajardo and Coleen Denise Colombo*

-and-

By:

/s/ Alan S. Fukushima
Alan S. Fukushima

Trustee for the Bankruptcy Estate of Cheryl McNeil

IT IS SO ORDERED: September 26, 2019

/S/ Shelley C. Chapman
THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE